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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

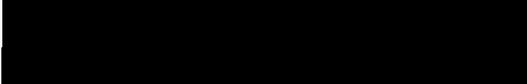


U.S. Citizenship
and Immigration
Services



F1

DATE: JUN 20 2012 OFFICE: NATIONAL BENEFITS CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)(i)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office



DISCUSSION: The Director of the National Benefits Center (“the director”) denied the Petition to Classify Orphan as an Immediate Relative (Form I-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

Applicable Law

The petitioner seeks classification of an orphan as an immediate relative pursuant to section 101(b)(1)(F)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F)(i), which defines an orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed in his behalf . . . who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption[.]

The regulation at 8 C.F.R. § 204.3(b) states, in pertinent part, the following:

Abandonment by both parents means that the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession. A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. . . .

* * *

Desertion by both parents means that the parents have willfully forsaken their child and have refused to carry out their parental rights and obligations and that, as a result, the child has become a ward of a competent authority in accordance with the laws of the foreign-sending country.

Disappearance of both parents means that both parents have unaccountably or inexplicably passed out of the child's life, their whereabouts are unknown, there is no reasonable hope of their reappearance, and there has been a reasonable effort to locate them as determined by a competent authority in accordance with the laws of the foreign-sending country.

* * *

Incapable of providing proper care means that a sole or surviving parent is unable to provide for the child’s basic needs, consistent with the local standards of the foreign-sending country.

Loss from both parents means the involuntary severance or detachment of the child from the parents in a permanent manner such as that caused by a natural disaster, civil unrest, or other calamitous event beyond the control of the parents, as verified by a competent authority in accordance with the laws of the foreign sending country.

* * *

Separation from both parents means the involuntary severance of the child from his or her parents by action of a competent authority for good cause and in accordance with the laws of the foreign-sending country. The parents must have been properly notified and granted the opportunity to contest such action. The termination of all parental rights and obligations must be permanent and unconditional.

Sole parent means the mother when it is established that the child is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. An illegitimate child shall be considered to have a sole parent if his or her father has severed all parental ties, rights, duties, and obligations to the child, or if his or her father has, in writing, irrevocably released the child for emigration and adoption. This definition is not applicable to children born in countries which make no distinction between a child born in or out of wedlock, since all such children are considered to be legitimate. In all cases, a sole parent must be incapable of providing proper care as that term is defined in this section.

Facts and Procedural History

The petitioner is a 64-year-old U.S. citizen who adopted the beneficiary in the Philippines in 2007. The petitioner filed the Form I-600 with U.S. Citizenship and Immigration Services (USCIS) on October 11, 2011. On December 13, 2011, the director issued a Request for Evidence (RFE) to which the petitioner responded. After considering the evidence in the record, the director denied the petition because the beneficiary was not an orphan as described at section 101(b)(1)(F)(i) of the Act. On appeal, the petitioner through counsel asserts: "Considering the plain language of the statute, Sole parent should be interpreted to mean the parent remaining after the desertion of the family by the mother or father." According to counsel, the biological father left for Saudi Arabia prior to the beneficiary's birth and has had no contact with the biological mother or their children. Counsel also asserts that the biological mother's income as a school teacher in the Philippines is insufficient to provide for the beneficiary's basic needs, consistent with the local standards in the Philippines.

Analysis

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the evidence in the record does not demonstrate the beneficiary's eligibility as an orphan.

A mother may be classified as a *sole parent* only when the beneficiary is illegitimate and has not acquired a parent within the meaning of section 101(b)(2) of the Act. *See* 8 C.F.R. § 204.3(b)

(definition of *sole parent*). Evidence in the record indicates that the biological parents were married in 1992 prior to the beneficiary's birth in 1995, which makes the beneficiary the legitimate child of her biological father. While counsel asserts on appeal that the definition of sole parent should also be defined as the parent who remains with the child after desertion by the other parent, counsel cites no statute, regulation or caselaw to support his claim. Accordingly, the beneficiary cannot be considered the child of a sole parent.

The record also fails to demonstrate that the beneficiary meets any of the remaining definitions of an orphan at section 101(b)(1)(F)(i) of the Act, as there is no evidence that the beneficiary has been a ward of a competent authority in the Philippines because of the death or disappearance of, abandonment or desertion by, or separation or loss from, her biological parents. To the contrary, according to the petitioner's affidavit as well as the affidavits of others who submitted testimony on her behalf, the beneficiary has been living with the petitioner's sister in the Philippines along with the beneficiary's sibling. The *Consent to Adoption*, in which both biological parents gave their consent for the beneficiary's adoption by the petitioner, and which was executed in front of a notary public in the Philippines, demonstrates that the biological parents relinquished their parental rights directly to the petitioner in anticipation of the adoption.

Counsel maintains that the biological father deserted his family and that his name appears on the *Consent to Adoption* only because the court-appointed social worker was able to contact the biological father in Saudi Arabia and have him sign the *Consent*. However, counsel provides no evidence of his assertions, such as a statement from the social worker attesting to the biological father's whereabouts.¹ In the adoption decree, the judge noted the social worker's testimony that "she went to the residence of the petitioners . . . and personally interviewed . . . the biological parents of the minor children." In addition, when notarizing the *Consent*, the notary public indicated that the signatures of the biological parents were subscribed and sworn to before him and that he was provided with the couple's community tax receipt at that time. This evidence belies counsel's claim that the biological father was living in Saudi Arabia.

Conclusion

The record lacks sufficient evidence to establish that the beneficiary meets the definition of an orphan at section 101(b)(1)(F)(i) of the Act. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition remains denied.

¹ The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).